



State of California


REAL ESTATE WITHHOLDING

FOREIGNERS AND THEIR PROPERTY INVESTMENTS

(State of California Real Estate Withholding under the Revenue and Taxation Code)

The State regulations regarding withholdings on real property sales is a little different from the Federal withholding under the FIRPTA guidelines. For the State, the law is written such that all real property being sold requires the payment of tax in an amount equal to **3.33% of the sales price**. The amount is withheld from the Seller right in the escrow transaction and sent to the Franchise Tax Board at closing. The amount is considered a “prepayment” of income taxes on the potential gain. There are, however, certain withholding exemptions and those can be found on California’s 593-C Real Estate Withholding Certificate.

EXEMPTIONS that can be claimed:

1. If the sales price is \$100,000.00 or less (exemption is automatic).
 2. The Seller has used the property as his principal residence at least 2 out of the 5 year period right before the sale.
 3. The Seller is a California corporation, limited liability company or partnership that is NOT a single member entity and which is registered to do business in California.
 4. The Seller can claim a loss or zero gain on the sale by filling out form 593-E (Computation of Estimated Gain or Loss).
 5. 1031 Tax Deferred Exchange transactions: If the Seller is doing a 1031 tax deferred exchange with the property, then he can check one of the boxes on the 593-C form. However, if he does not conclude the exchange or only part of the funds are used, then the withholding will still need to be done.
 6. Installment Sale transactions: A different animal! This “exemption” is different. If the Seller is carrying a loan for the Buyer then the part of funds that he receives at the close of escrow- Sales price minus installment Note – (which is called the “first installment by the FTB) will require the withholding AND every time the Buyer pays the principal on this loan, he will have to do the withholding on the principal paid and send that amount to the State. The **Buyer** must complete and sign form 593-I (Real Estate Withholding Installment Sale Acknowledgement) at close of escrow.
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If the parties decide NOT to continue with the withholding after close of escrow, the Seller can declare the full sale amount on his next tax return, and then send a written request to the FTB to release the Buyer from withholding on the installment sale payments.

Please note: The FTB WILL NOT take a full 3.33% payment on the full sales price at the time of closing, even if both parties want it. FTB will reject the payment and ask the Seller and Buyer to pay per their regulations.

The above exemptions, with the exception of the 1st one, are not automatic. Your Settlement Agent will be providing the Franchise Tax Board form 593-C (Real Estate Withholding Certificate) to be reviewed, completed and signed. If the Seller can check any one of the boxes on the form, then the transaction is exempt.

For further questions regarding the State of California’s Real Estate Withholding laws, find the following link:
https://www.ftb.ca.gov/individuals/wsc/California_Real_Estate.shtml

